

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4744 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

JAYABEN SHANTILAL JANI

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL K SHAH for Petitioner
MRS KETTY A MEHTA for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2
SERVED BY DS for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/97

ORAL JUDGEMENT

The petitioner herein is a primary school teacher who claims seniority on the principle of continuous officiation. The facts leading to the present case are

as under :

2. The petitioner was appointed as primary teacher under the Mehsana District Panchayat on 31st July, 1961. Upon formation of Gandhinagar District on 1-4-1966 the petitioner's service stood transferred to Gandhinagar District. The Government under its Notification dated 1st May, 1976 had stipulated a separate Educational District for Gandhinagar city area i.e. all primary schools situated within Gandhinagar city area were brought under the administrative control of the District Education Officer, Gandhinagar. The petitioner thereafter applied for her transfer to Gandhinagar city. Her request for such transfer was accepted and she was transferred to Gandhinagar city. She joined primary school in Gandhinagar city on 30th November, 1976. Since then she has been serving in Gandhinagra city as primary teacher. In view of formation of separate educational district for Gandhinagar city, separate seniority list of primary school teachers serving in primary schools situated within the area of Gandhinagar city was prepared. The seniority list of such primary school teachers is published on 5-2-1981. The petitioner's seniority in the said seniority list was determined on the basis of her transfer to Gandhinagar city made on 30th November, 1976. This seniority list has prevailed all along.

3. Feeling aggrieved by the above referred seniority list, some primary school teachers serving in the Gandhinagar Township challenged the said seniority list by preferring writ petitions being special civil applications Nos. 3162 of 1981 and 3713 of 1981. Said petitions were decided and disposed of by this court [Coram: Mr.Justice N.J.Pandya] under its judgment and order dated 3rd July, 1992.Considering the scheme of the provisions of the Primary Education Act 1947, the provisions contained in rule 40 of the Bombay Primary Education Rules, 1949, and the Government Resolutions passed from time to time in this behalf, learned Judge held that the transfers of primary teachers prior to the issuance of the Government Resolution dated 30th July, 1977 shall be governed by the terms and conditions of transfer prescribed under rule 40 of the Bombay Primary Education Rules, 1949. The Court, therefore, held that in the cases of the inter district transfers effected prior to 30th July, 1977, seniority would be governed by the terms and conditions of such transfer. In absence of any specific terms for loss of seniority, a primary teacher would be entitled to seniority on the principle of continuous officiation i.e. from the date of his/her

entry in service as primary school teacher. Said judgment has been followed by this Court [Coram:Mr. Justice J.M.Panchal] in special civil application No. 3156A of 1983 decided on 4th April, 1994.

4. The petitioner claims a similar benefit It is the claim of the petitioner that while her request for transfer to Gandhinagar City was accepted by the concerned district primary education committees, no term or condition in respect of loss of seniority was imposed in the order of transfer. In absence of any specific condition imposed in the permission granted by the concerned District Education Committees, the petitioner cannot be made to lose the seniority and in view of the above referred two judgments, she is entitled to seniority from the date of her entry in service i.e. from 31st July, 1961. In support of her claim, she has placed copy of the order of transfer made on 1st September, 1975 at annexure "A" to the petition. Upon perusal of the said order, it appears that no specific terms and conditions were prescribed while granting petitioner's request for transfer to Gandhinagar City. The respondent No. 3 has not come forth before this Court controverting the facts stated in the petition. In absence of any opposition, averments made in the petition and supported by the documentary evidence are required to be accepted. Petitioner is, therefore, entitled to a declaration that she is entitled to seniority amongst the primary school teachers serving under respondent No. 3 on the basis of the principles of continuous officiation.

5. I, however, am not inclined to grant relief prayed by the petitioner. The impugned seniority list was published on 5h February, 1981. The petitioner was placed on the said seniority list at Sr. No. 150 on the basis of date of her joining the primary school in Gandhinagar city. The petitioner raised objection and submitted her representation on 13th February 1981. She claimed that her seniority should be determined on the basis of her entry in service i.e. from 31st July 1961. The petitioner, however, did not pursue the matter further. She does not appear to have taken any action against the respondents or pursued her representation dated 13th February, 1981. The seniority list which is determined in the year 1981 has remained in force all these sixteen years. The petitioner has not raised any dispute regarding her seniority within reasonable period. The petitioner has slept over her right for a long period of 16 years and has permitted the rights to be crystallized. If the said seniority is now disturbed after such a long period, the right to

promotion/selection grade accrued to the other primary school teachers may be adversely affected. It appears that the petitioner having learnt that the other primary teachers who approached this court in the year 1981 and 1983 respectively have succeeded before this court, the petitioner has now raised this dispute after fourteen years. Further, this court had decided the issue as far back as on 3rd July, 1992 followed by an order made on 4th April, 1994. Even after those judgments are rendered, the petitioner has permitted time to lapse for nearly three years and has preferred this petition as late as on 19th June, 1995. I am, therefore, of the opinion that the petitioner cannot be granted relief after more than sixteen years. The petitioner must be held to have acquiesced in her seniority from the date of her transfer to Gandhinagar City. The claim of the petitioner for seniority from 31st July, 1961 is, therefore, rejected. Petition is dismissed. Rule is discharged. Petitioner shall bear their own costs.

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JVSATWARA.